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COOPER TIRE & RUBBER COMPANY

UNITED STATES DEPARTMENT OF TRANSPORTATION

RICHARD D. TEEPLE
VICE PRESIDENT
GENERAL COUNSEL

401 424-4078
Docket No. 02-12150

July 1, 2002

Hon. Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

**Re: Notice of Proposed Rulemaking on Confidential Business Information
(76 Fed. Reg. 21198, Apr. 30, 2002); Docket No. NHTSA-02-12150 - 17**

Dear Dr. Runge:

These Comments are submitted on behalf of the Cooper Tire & Rubber Company ("Cooper") in response to the above-referenced Notice of Proposed Rulemaking on Confidential Business Information, issued by the National Highway Traffic Safety Administration ("NHTSA") and published on April 30, 2002 (67 Fed. Reg. 21198).¹

Cooper is uniquely situated in the American tire industry. It is one of two U.S.-owned full-line tire producers and the only such producer whose tires are made almost entirely in the United States and are sold almost entirely in the United States. As a smaller participant in the highly concentrated, world-wide oligopolistic tire industry², Cooper is particularly vulnerable to harm resulting from the wholesale release of so-called "early warning information".

¹ Since these comments are also germane to the pending early warning reporting rulemaking, Docket No. NHTSA 2001 8677, we are submitting these comments to that docket as well.

² For example, based on estimates printed in Market Data Book, Tire Business (Feb. 4, 2002) for 2000, Goodyear's, Michelin's and Bridgestone's combined North American tire sales were \$17.5 billion and their combined worldwide tire sales were \$39.7 billion. In contrast, Cooper's worldwide tire sales were \$1.7 billion, most of which were in the United States.

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Cooper endorses the views expressed by the tire industry's trade association, the Rubber Manufacturers Association ("RMA"), in a submission filed with NHTSA on this date. In that document, RMA effectively urged NHTSA to promulgate a rule declaring that early warning information "shall not be disclosed unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121 of title 49 of the United States Code." As RMA correctly explained, its proposal is supported by the statutory language and context, legislative history and strong public policy considerations, not the least of which is that disclosure of early warning information would be anticompetitive, would likely cause substantial economic harm to individual competitors and, rather than benefit consumers, would likely expose them to confusion and misinformation.

The possibility that early warning information would be released is so important to Cooper that it engaged Professor Michael D. Bradley of the George Washington University's Department of Economics to study the competitive impact that such release would have on the tire industry and on Cooper in particular. In his paper (annexed as Attachment 1), Professor Bradley identifies the conditions in the tire market which indicate the severity of the competitive harm with which producers would be threatened should early warning information be released.

Stated succinctly, Professor Bradley shows how virtually every element of early warning information, if released, would have an adverse competitive impact on U.S. tire manufacturers, in general, and on Cooper, in particular. He identifies release of any of the following information as likely having a significant, competitively harmful effect:

- (1) production volume data (by stock keeping unit and by tire line);
- (2) green tire application information;
- (3) warranty adjustment rates;
- (4) damage claim rates; and
- (5) claims for fatalities and injuries.

Moreover, like RMA, he shows how release of these data would not have any countervailing benefit to consumers but would likely result in misuse to the detriment of competition, individual competitors and consumers.

We believe that this provides further evidence that RMA's argument is sound.

Respectfully submitted,



Richard D. Teeple

Vice President and General Counsel

Attachment

ATTACHMENT 1

On The Harmful Effects That Release Of "Early Warning Information" Could Have On Tire Manufacturers, Particularly Cooper Tire & Rubber Company

Prepared by Prof. Michael D. Bradley
Department of Economics
The George Washington University
Washington, D.C.

June 2002

Introduction

The Notice of Proposed Rulemaking (NPRM) published at the request of the National Highway Traffic Safety Administration (NHTSA) in the *Federal Register* of April 30, 2002 contemplates the release of highly confidential, firm-specific information known as "Early Warning Information". Release of this information could cause serious economic injury to tire manufacturers in general and would have a particularly deleterious effect on Cooper Tire & Rubber Company (Cooper). The critical point is that the release to the public of confidential, detailed data could cause serious economic harm to Cooper even though not a single tire defect occurred. In this paper, we explain how this economic harm will come about.

The tire industry is segmented with different manufacturers specializing in different parts of the market. In addition, much of the competition comes at the wholesaler/dealer level and not the consumer level. We show that these characteristics lead to a situation in which release of detailed production data would be particularly injurious to tire manufacturers. In addition, the tire market is highly concentrated, with three large global manufacturers dominating sales and production. This means that not all tire firms will be equally injured by release of confidential production data and we show that smaller companies like Cooper are particularly at risk.

In addition, we show that release of other confidential non-production data would also cause competitive harm to tire companies. Release of only a few statistics, such as the warranty adjustment rate, without the complete background behind those statistics could lead to a very misleading picture of tire performance. This means that release of detailed warranty adjustment data out of context could lead to erroneous inferences about tire safety which, in turn, could lead to unjustified competitive harm.

Discussion

The NPRM suggests that NHTSA is considering public release of firm-specific information on tire production, identification of green tire groups and the identification of tires made from each green tire, warranty adjustments, and claims for property damage, fatalities, and injuries. This information will be requested and possibly released in great detail. For example, the Rubber Manufacturers Association indicated that its members would have to report on more than 24,000 individual tire lines to comply with the rules.¹ Release of this type of detailed information stands as a great potential liability to individual manufacturers.

¹ The Rubber Manufacturers Association estimated that if the early warning system required reporting on tire lines individually it would require reporting on 16,924 separate P-metric and passenger car tire lines, 5,353 separate light truck tire lines, and 2,185 heavy truck and bus tire lines. This is a total of 24,462 separate tire lines. See, "Memorandum by William H. Walsh," NHTSA, Aug. 23, 2001. NHTSA Docket 2001-8677-62.

We now consider separately the types of information specified in the rulemaking. The first type is production information. Production information is routinely kept confidential and not released by government agencies. It is well recognized that release of detailed firm-specific product information, or information leading thereto, stands to be injurious to the submitting firm. This is all the more true for the tire industry, given the nature of the market for tires.

At the broadest level, the tire market is segmented into two submarkets. The first submarket is the original equipment (OE) market and, in 2001, about 54 million tires were shipped in the U.S. OE market for passenger cars. For truck and light truck tires, OE shipments were about 10 million tires.² The second and larger of the two submarkets is the replacement market. In 2001, approximately 192 million replacement tires were shipped for passenger cars and 47 million replacement tires were shipped for trucks, light trucks and buses.

Both markets are highly concentrated. The three largest manufacturers (Goodyear, Michelin and Bridgestone/Firestone) produce approximately 59 percent of the passenger car tires sold in the replacement market in the U.S. and Canada. Similarly, they account for 54 percent of the light truck tires and 76 percent of highway truck tires in their replacement markets in the U.S. and Canada. The OE market is even more concentrated, with the same three producers supplying approximately 85 percent of the OE tires.

² Unless otherwise noted, the source for these and other tire data referenced in this paper is Market Data Book, Tire Business (Feb. 4, 2002) at 9.

The replacement market itself is essentially subdivided into three segments or tiers. The first tier includes sales of premium tires to brand-conscious consumers who are typically upscale, with some degree of loyalty to the original equipment on their new vehicles. These consumers are not overly price-conscious, and are willing to pay for a particular brand name. The second tier represents the value-seeking customer who is looking for quality, but not quite willing to pay the premium price for a tier one tire. This consumer looks for recognizable brands and remembers the reputation of those brands. In the third and final tier, sales are purely price-driven as these customers are looking for the highest value at the lowest price.

Tire retailers typically carry at least one brand in each of these tiers, but may not necessarily carry more than one brand. This market segmentation means that not all tires compete directly against one another and that the different manufacturers use different brands to find their most profitable marketing strategy among the three tiers.

This segmentation increases the potential harm from releasing detailed tire production data. Manufacturers' brands typically sell in only one of the three tiers. For example, the Goodyear and Michelin brands sell in the top tier, whereas (Goodyear's) Dunlop and (Michelin's) BF Goodrich brands sell in the second tier. Cooper's flagship brand also sells in the second tier, while its Starfire brand sells in both the (lower) second and (upper) third tiers.

Because tire manufacturers know in which tiers the various brands participate, public release of production data by size and brand (or tire line) reveals very specific and critical information about a company's marketing strategy. Competing firms will be able to target those sectors of the market in which the target firm is most actively

participating. Moreover because production numbers are unit specific, competing firms will be able to target those specific sizes and lines which serve as the fundamental basis for the target company's marketing plans. This makes the target company particularly vulnerable to competitive attack.³

One reaction to this injury might be to suggest that because all tire companies must reveal their confidential data, there is a level playing field and no individual company would be disadvantaged or injured. This reaction is incorrect. It fails to account for the extreme asymmetry in the size and market power of tire producers. As explained above, the three giants dominate the market. Goodyear, Michelin, and Bridgestone/Firestone account for 74 percent of all tires sold in North America.⁴ Cooper has 7 percent of that market and does not participate in the OE market. This asymmetry in size has important implications for the effects of the public release of tire data.

First, the sheer size of the market coverage and the number of different tires produced by the three giant tire companies make use of individual tire data much more difficult. That is, with many different brands, tire lines, and tire sizes being produced, it is much more difficult to analyze the released data to probe for specific weaknesses and strengths. It would be much easier for one of the three giant firms to analyze Cooper's

³ For example, Cooper sells a substantial amount of "private brand" tires in which the tires sell under the customer's brand name, not Cooper's. Public release of production by SKU stands to be highly revealing about this part of Cooper's business. Release could thus cause considerable economic harm to Cooper as it would allow the major manufacturers to precisely target this important part of Cooper's marketing strategy.

⁴ In addition, they control nearly 60 percent of the replacement market for passenger tires, the largest tire market in the world.

data and determine a responsive marketing plan than it would be for Cooper to analyze one of the three major producers' data and construct a similar plan. This places Cooper at risk if all detailed information is made public. Given the significant resources of the major firms, if any one of them were to use the publicly released data to find a market niche in which Cooper was successful, it could easily finance and mount the marketing plan necessary for removing Cooper from that niche.

Size also matters when considering the vulnerability associated with the release of the individual tire line or individual SKU data. In a very large company, it is unlikely that one tire product or one tire line would have a particularly important role in the company's sales. In a smaller company, however, the importance of a particular tire line or unit could be significantly higher. This means that a company the size of Cooper could be more vulnerable to attack from the release of product specific information than a large company like Goodyear or Michelin.

Taken together, these factors clearly indicate that public release of the detailed production information would put Cooper at a serious disadvantage. By providing Goodyear, Michelin and Bridgestone/Firestone with deep insight into Cooper's production and marketing strategies, the release of the information would give these giant companies the opportunity to directly attack Cooper where it hurt the most. These are all global companies with production facilities around the world. They obviously have the size and wherewithal to sustain a prolonged attack on Cooper. Access to Cooper's detailed information makes that attack far easier and more efficient and holds the potential to seriously disrupt Cooper's business.

One other factor about production data is important. Tire manufacturers rarely sell directly to consumers. Although some sales go through tire company stores, the overwhelming majority of retail sales are through indirect channels: independent tire dealers, retail chains, or mass merchandisers. This means that replacement tires are sold by manufacturers primarily to wholesalers/retailers, not final consumers. As a result, specific tire lines may be associated with a single customer. As an example, consider a tire manufacturer that produces tires for retail outlets such as retail chains and mass merchandisers. This is an important outlet as eighteen percent of replacement passenger tires are sold through this channel.⁵ In many instances, tire manufacturers will produce tires to be sold under the retail chain's own private brand. A particular tire line may be devoted entirely to tires sold under that brand. Release of detailed production information may reveal detailed information about the entire product line going to one customer. This is obviously sensitive information, and its release would put the producer at a competitive disadvantage.

This characteristic of the tire industry also means that release of green tire information could cause exceptional economic harm to a firm like Cooper. Green tires serve as the platform for the production of all tire lines and each individual tire SKU. Release of Cooper's green tire groups and the identification of the green tire source for each finished tire would provide a complete and comprehensive road map to Cooper's production and marketing strategies. Without exaggeration, release of this green tire information would essentially be equivalent to release of Cooper's business plan for its tire business. This is clearly harmful to Cooper.

⁵ Market Data Book at 8.

The release of the other type of information, such as warranty adjustment and damage claims, and serious injury or fatality claims, also stands to hurt tire companies. This information is sophisticated and complex. Release of only a few statistics, such as the warranty adjustment rate, without the complete background behind those statistics could lead to a very misleading picture of tire performance. For example, two different tire manufacturers, or for that matter one manufacturer with two different tire lines could produce two substantially similar tires. Yet, those tire lines may present very different warranty adjustment information due to factors that have nothing to do with safety. The two tire lines may be sold in different parts of the country or may be sold to different types of users. If one line is sold primarily to commercial users who have high annual miles driven, the warranty adjustments may be much higher than the identical tire sold primarily to consumers with relatively low annual miles driven. More simply, one tire manufacturer may simply have a longer and more generous warranty policy. This fact alone could cause a higher apparent warranty rate in the submitted data, despite the fact that the manufacturer's tires were of comparable quality. Release of these confidential data could thus perversely hurt those companies that provide a generous warranty. These examples show that release of detailed warranty adjustment data out of context could lead to erroneous inferences about tire safety which, in turn, could lead to erroneous and unjustified competitive harm.

In similar fashion, warranty adjustment rates could be taken out of context by aggressive if not unscrupulous competitors. The release of raw warranty adjustment (or damage claim) figures by tire line and SKU raises the issue of how the data could be used. Because tires are sold by manufacturers primarily to dealers and chains, not the

general public, warranty adjustment rates and damage claims could be easily used as part of an unsavory sales campaign. Selective and distorted use of the information could be part of an effort to convince a dealer or retail chain that it faces exceptionally high warranty costs from a particular manufacturer's tires even when that is not the case.

Release of the absolute number of warranty adjustments without the associated production for context is useless and misleading. One cannot determine what a "high" or "low" rate of warranty adjustment is without the corresponding level of production. Yet, release of the absolute level of warranty adjustment along with the warranty rates, provides detailed information about production rates which causes the competitive harm described above. Similarly, release of warranty rates for individual tire sizes and lines without the associated production, could be misleading because a very high "rate" could be associated with a very low level of production. A manufacturer could appear to have a high average warranty adjustment rate, when the rate in fact was low. Further, a higher than "average" rate could reflect a marketing or policy decision favoring customer satisfaction.

Competitive harm may not necessarily come from competitors. It could come from well meaning but technically unsophisticated consumer groups. Warranty adjustments and adjustment rates have a stochastic component. That is, for a given actual annual rate of adjustment over the life of the tire, there is a random component in the pattern in which those warranty adjustments occur. If NHTSA handles the data, a careful statistical analysis can be made to ensure accurate inferences are made from ongoing warranty adjustment data. If the data are released to the public, unsophis-

ticated and erroneous analysis could produce many “false positives,” indicating that there is a problem with a specific tire when, in actuality, there is not. Of course, the economic cost of a false positive can be very high because of the negative reputational effects.

These groups may not have the resources or inclination to properly interpret the confidential data. This point is illustrated by release of the claims involving injuries or fatalities. This statistic is of obvious interest to consumer groups and is bound to be widely disseminated by them. However, without the proper context, the rates calculated for these types of claims could be highly misleading to consumers and substantially injurious to tire companies. For example, suppose that two tire companies make comparable tires, but one of the companies sells in the original equipment market and one sells in the replacement market. The original equipment tires will be used on new, low mileage, properly maintained and safer vehicles. The replacement tires will be used on older, high mileage vehicles with a wide variety of maintenance histories. The replacement tires, despite the fact that they are essentially identical to the original equipment tires, will likely be involved in more accidents involving injuries and fatalities. Alternatively, suppose that two manufacturers make comparable tires, but one manufacturer happens to sell to a set of motorists that are unlikely to properly maintain their tires. Improper maintenance could lead to higher failure ratios and, if so, the manufacturer who sells to this customer group would be falsely targeted as having less reliable tires.

In sum, a review of the crude reported injury claim data thus can give a very misleading picture and dissemination of this information could cause unwarranted competitive harm to tire manufacturers.

Conclusion

While the collection, processing and proper analysis of Early Warning Information may be quite useful to NHTSA in its effort to shorten the time by which defects in vehicles and vehicle equipment are identified, the public release of that information, at an early stage and *en masse*, will not benefit consumers and will likely lead to serious economic harm to producers. The harm to a small tire manufacturer like Cooper will be more severe.